

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of

THOMAS WEISEL PARTNERS, LLC
One Montgomery Street, Suite 3700
San Francisco, California 94104
CRD#46273

Respondent.

) DOCKET NO. S-03579A-05-0000

) DECISION NO. 67774

) **ORDER TO CEASE AND DESIST, ORDER**
) **FOR ADMINISTRATIVE PENALTY AND**
) **CONSENT TO SAME**

) **BY: THOMAS WEISEL PARTNERS, LLC**

WHEREAS, Thomas Weisel Partners, LLC ("TWP") is a broker-dealer registered in the state of Arizona; and

WHEREAS, coordinated investigations (the "Investigations") into TWP's activities in connection with certain conflicts of interest that research analysts were subject to during the period of approximately July 1999 through 2001 have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission ("SEC"), the New York Stock Exchange ("Exchange"), and the National Association of Securities Dealers ("NASD") (collectively, the "regulators"); and

WHEREAS, TWP has cooperated with regulators conducting the investigation by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, TWP has advised regulators of its agreement to resolve the issues raised in the investigations relating to its research practices; and

Decision No. 67774

1 WHEREAS, TWP agrees to implement certain changes with respect to its research
2 practices to achieve compliance with all regulations and any undertakings set forth or incorporated
3 herein governing research analysts, and to make certain payments; and

4 WHEREAS, TWP, through its execution of this Consent Order, elects to permanently waive
5 any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S.
6 §44-1801 *et seq.* (“Securities Act”) and Title 14 of the Arizona Administrative Code with respect
7 to this Order To Cease and Desist and Order for Administrative Penalties (“Order”) and;

8 WHEREAS, the Arizona Corporation Commission (“Commission”) has jurisdiction over
9 this matter pursuant to the Securities Act;

10 NOW, THEREFORE, the Commission hereby enters this Order:

11 **I. JURISDICTION/CONSENT**

12 TWP admits the jurisdiction of the Commission, neither admits nor denies the Findings of
13 Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the
14 Commission.

15 **II. FINDINGS OF FACT**

16 **A. Background and Jurisdiction**

17 1. Thomas Weisel Partners, LLC is a Delaware limited liability company with its
18 headquarters and principal executive offices in San Francisco, California. TWP was formed as
19 Portsmouth Capital LLC in September 1998, and changed its name to Thomas Weisel Partners
20 LLC in February 1999.

21 2. TWP is registered with the Securities and Exchange Commission ("Commission"),
22 is a member of the New York Stock Exchange, Inc. (“Exchange”) and the NASD Inc. ("NASD")
23 and is licensed to conduct securities business on a nationwide basis.

24 3. TWP describes itself as a “merchant bank providing investment banking,
25 institutional brokerage, private client services, private equity and asset management exclusively
26 focused on the growth sectors of the economy.” TWP provides a comprehensive range of

1 advisory, financial, securities research, and investment services to corporate and private clients.

2 TWP also provides investment banking services to corporate clients.

3 4. TWP is currently registered with the Commission as a broker-dealer, and has been
4 so registered since January 21, 1999.

5 5. This action concerns the time period of July 1999 through 2001 (the "relevant
6 period"). During that time, TWP engaged in both research and investment banking ("IB")
7 activities.

8 **B. Overview**

9 6. During the relevant period, TWP employed research analysts who provided research
10 coverage of the issuers of publicly traded securities. TWP's equity research analysts collected
11 financial and other information about a company and its industry, analyzed that information, and
12 developed recommendations and ratings regarding a company's securities. TWP distributed its
13 research product directly to its own client base. TWP's research was also distributed through
14 subscription services such as Thomson Financial/First Call, Multex.com, Inc., and Zacks
15 Investment Research (collectively referred to as "Public Services").

16 7. From February 1999 to June 1999, TWP maintained a 4-tiered ratings system:
17 Strong Buy, Buy, Watch List, and Sell. In June of 1999, TWP renamed the Sell rating to
18 Underperform. In August 1999, TWP renamed the Watch List rating to Market Perform so that its
19 4-tiered ratings system was: Strong Buy, Buy, Market Perform, and Underperform. That rating
20 system remained intact until November 2001.

21 8. TWP ratings were heavily skewed towards "Buy" and "Strong Buy." For example,
22 as of April 13, 2000, TWP covered approximately 230 stocks with 89% being rated either "Buy" or
23 "Strong Buy" (42% were rated "Strong Buy" and 47% were rated "Buy"). In contrast, there was
24 only 1 stock rated "Underperform." As of January 18, 2001, TWP covered approximately 268
25 stocks, with 80% being rated either "Buy" or "Strong Buy" (31% were rated "Strong Buy" and
26 49% were rated "Buy"), but none rated "Underperform."

1 9. As set forth below, written presentations prepared in connection with pitches for
2 initial public offerings (“IPOs”) often touted TWP’s favorable coverage of other issuers and
3 included research coverage as one of a number of services that TWP would provide in
4 “aftermarket” support of an issuer’s stock.

5 10. Research analysts participated in the pitch process for IPOs, secondary offerings and
6 merger and acquisition work that TWP sought to perform on behalf of publicly-traded clients and
7 potential clients. The analysts involved in the pitch process sometimes included the same analysts
8 who were providing or had provided research coverage of the client or potential clients from whom
9 TWP was seeking investment banking business. In written presentations prepared in connection
10 with these pitches, TWP touted the past research “support” it had provided to its client or potential
11 client, and included charts that tracked its coverage and ratings, and the issuer’s stock price.

12 11. TWP analysts considered prospective investment banking business in determining
13 whether to initiate or to continue to provide research coverage for issuers. TWP’s investment
14 bankers participated in the evaluation of TWP research analysts, and a portion of the TWP
15 analysts’ compensation was tied to the analysts’ success in helping TWP generate investment-
16 banking business. TWP failed to disclose any of these facts to its brokerage clients or to the
17 general public.

18 12. TWP received at least one payment from another broker-dealer as consideration for
19 TWP’s research coverage of a security. TWP failed to disclose the payment or the amount thereof
20 to its brokerage clients or to the general public.

21 13. On occasion, TWP paid other broker-dealers to initiate or to maintain research
22 coverage with respect to issuers for which TWP acted as an underwriter. The broker-dealers that
23 TWP paid to initiate or to maintain research coverage did not disclose that they had received
24 consideration for their research coverage of the securities.

25 **C. TWP’S RESEARCH STRUCTURE CREATED CONFLICTS OF INTEREST FOR**
26 **RESEARCH ANALYSTS**

Research Analyst Compensation Tied to Investment Banking Revenue

14. TWP tracked investment banking revenue attributable to research analysts. TWP also tracked to research analysts the brokerage revenue generated from stocks that the analysts covered. During the relevant period, the amount of fees TWP generated from investment banking deals attributed to an analyst accounted for at least five percent of that analyst's overall compensation. Additionally, TWP used the brokerage commission revenue generated in the stocks covered by TWP analysts as a factor in determining analysts' total compensation.

15. During the relevant period, TWP compensated its research analysts both directly and indirectly on the amount of investment banking revenue they helped to generate. Research analysts thus faced a conflict of interest between the incentive to help win investment banking deals for TWP while being under an obligation to conduct and publish objective research regarding those companies.

TWP's Investment Bankers Evaluated TWP's Research Analysts and Helped Determine the Compensation They Received

16. During the relevant period, TWP organized research analysts and investment bankers into "Tiger Teams" along industry groups such as telecommunications and software. Tiger Teams coordinated the efforts of research and investment banking to identify new business opportunities.

17. TWP investment bankers who worked with a TWP research analyst on investment banking deals evaluated the research analyst's performance as part of an annual performance evaluation. That evaluation was considered in setting the analyst's compensation. This input from investment bankers further indicated to research analysts the importance of satisfying the needs of investment bankers and their clients and significantly hampered the independence of research reports that the analysts issued.

...

...

TWP Research Analysts Played Important Roles in “Pitches” To Win Investment Banking Business, Promised Research Coverage for IPO Clients, and Provided Coverage Immediately Following the Quiet Periods

18. During the relevant period, research analysts played a pivotal role in winning investment banking business for TWP. Once TWP’s investment banking department decided to compete for a company’s investment banking business, particularly for an IPO, research analysts played a critical role in obtaining that business.

19. One of a research analyst’s significant responsibilities was to assist in TWP’s sales “pitch” where TWP explained to a company or an issuer why it should select TWP to be the lead managing underwriter for the offering or to be a member of an underwriting syndicate. According to TWP’s October 2000 equity research job descriptions, vice president-level analysts’ duties and responsibilities included “developing the ability to pitch and win corporate finance mandates.” The job description summary further stated that vice presidents “are building industry-wide relationships that the Firm will monetize via a variety of brokerage and capital market products.”

20. The summary of TWP principal-level analysts’ job description stated that they “have built industry-wide relationships that the Firm can monetize via a variety of capital markets products.” TWP principal-level analysts’ duties and responsibilities included:

Develop[ing] a Research Franchise that generates \$10-\$15 MM+ of average annual revenues from multiple revenue streams (Brokerage, CF, M&A, Private Equity) . . . [and] position[ing] the Firm to pitch and win corporate finance mandates.

21. The summary of TWP partner-level analysts’ job description stated as well that they “have built industry-wide relationships that the Firm can monetize via a variety of capital markets products.” TWP partner-level analysts’ duties and responsibilities included:

Continually develop[ing] and maintain[ing] a Research Franchise that generates \$20-\$30 MM of average annual revenues from multiple revenue streams (Brokerage, Corporate Finance, M&A, Private Equity) . . . [and] position[ing] the Firm to pitch and win corporate finance mandates including lead managed transactions.

22. In advocating retention of TWP, research analysts provided material regarding their research to be included in the pitch books presented to the company or issuer. They also routinely appeared with investment bankers at the pitches to help sell TWP services to the potential client. TWP pitch books to potential clients included representations about the role the research analyst would play if TWP obtained the business. In describing the “Role of Research,” the pitch book also provided a roadmap for the amount and type of coverage that the research department would provide. Examples of analysts’ participation in the “pitch” process are described below.

Loudcloud

23. Loudcloud, Inc., now known as Opsware, is a company that provides business internet infrastructure services. TWP participated as a member of the underwriting syndicate in Loudcloud’s March 9, 2001 IPO. Loudcloud’s stock was quoted on the NASDAQ National Market under the ticker symbol LDCL until August 2002, when the company changed its name to Opsware. Since the name change, the company’s stock has been quoted under the ticker symbol OPSW.

24. TWP’s relationship with Loudcloud began in February 2000 when the then chairman and founder of Loudcloud contacted a TWP partner and senior research analyst (“Loudcloud Senior Analyst”). Thereafter, the Loudcloud Senior Analyst and TWP investment bankers met with Loudcloud to discuss potential financing for the company.

25. Prior to Loudcloud’s IPO, the Loudcloud Senior Analyst mentioned Loudcloud in a periodic industry report dated June 19, 2000. TWP also invited Loudcloud to attend its annual “Growth Forum” held in late June 2000. Thereafter, TWP solicited underwriting work for Loudcloud’s IPO in a presentation made on or about August 16, 2000. During the presentation, TWP touted its ability to provide “aftermarket support,” which included, in part, research coverage. The presentation provided case studies on two companies that TWP had covered. The case studies highlighted the amount and types of research, i.e., reports specific to the particular company, periodic industry reports, and white papers that TWP provided for these two companies, suggesting

1 that TWP would do the same for Loudcloud. TWP also highlighted the fact that it mentioned
2 Loudcloud in a June 19, 2000 TWP report and that Loudcloud had attended TWP's annual
3 "Growth Forum" conference.

4 26. The presentation included biographical and professional information about the two
5 TWP analysts who would be covering the company along with a list of companies that they
6 previously and currently covered. The presentation also touted TWP's ability to communicate
7 Loudcloud's "story" through, in part, TWP's "all-star ranked research coverage." In a November
8 4, 2000, e-mail, the Loudcloud Senior Analyst boasted that "Loudcloud is a deal that I won, I lead
9 [sic] this pitch with [a TWP vice president and junior research analyst]."

10 27. On September 22, 2000 and February 9, 2001, TWP investment bankers and the
11 research analysts who worked on the Loudcloud IPO sent a memorandum to TWP's Commitment
12 Committee in support of TWP's participating in the Loudcloud IPO.

13 28. On April 3, 2001, after TWP participated as an underwriter in the Loudcloud IPO,
14 the Loudcloud Senior Analyst e-mailed senior Loudcloud management stating: "Gentlemen: this
15 e-mail is to inform you that, as promised during the Thomas Weisel Partners [sic] IPO pitch, I
16 initiated written research coverage on Loudcloud this morning – 25 days (to the hour) following
17 the pricing of the offering on March 8th. Our First Call note we will be posted shortly and our +20
18 page written research report, that you reviewed this weekend and we discussed changes to
19 yesterday, is being sent to editorial and printing today." TWP also provided research coverage of
20 Loudcloud in other periodic industry reports or notes during 2001. TWP's Loudcloud research
21 reports, notes, and other industry publications discussing Loudcloud were distributed through
22 Public Services.

23 **Gemplus**

24 29. Another example of analyst participation in the pitch process is with respect to
25 Gemplus International, S.A. ("Gemplus"), a French company that provides "smart" cards for
26 wireless communications and transactions. TWP participated as a member of the underwriting

1 syndicate in Gemplus' U.S. IPO of American Depositary Shares on December 8, 2000, and
2 Gemplus' stock has since been quoted on the NASDAQ National Market under the ticker symbol
3 GEMP.

4 30. TWP solicited underwriting work for the Gemplus U.S. IPO in a presentation to
5 company management on or about September 15, 2000. In the presentation, TWP touted its ability
6 to provide research coverage from "multiple angles" through reports specifically related to the
7 company as well as regularly published industry reports highlighting several companies. TWP also
8 presented a case study of research coverage it provided on another company, Verisign, Inc. On a
9 chart depicting Verisign's trade volume and increasing stock price, TWP highlighted dates upon
10 which TWP published recommendations of Verisign's stock. In one instance, the presentation
11 states, "12/21/99 TWP upgrades [Verisign] to a strong buy. Stock jumps \$35 in one day,"
12 suggesting that TWP could provide the same sort of coverage and results for Gemplus.

13 31. A TWP partner and senior research analyst ("Gemplus Senior Analyst") had
14 previously developed a relationship with Gemplus management and was largely responsible for
15 TWP being selected as an underwriter for Gemplus' U.S. IPO. A TWP vice-president and junior
16 research analyst ("Gemplus Junior Analyst") assisted the Gemplus Senior Analyst in his research
17 of the company. According to the lead TWP investment banker on the Gemplus U.S. IPO,
18 Gemplus, in selecting TWP as an underwriter, wanted "to make sure that [the Gemplus Senior
19 Analyst] will be the lead [analyst], with [the Gemplus Junior Analyst] on the deal. . . ."

20 32. A venture capital firm with whom TWP had a business relationship also played a
21 role in Gemplus awarding TWP with an underwriting slot on the IPO. The venture capital firm,
22 Gemplus' controlling shareholder, guaranteed TWP a "minimum total fee of \$3 million for being a
23 member of the Gemplus underwriting syndicate."

24 33. On November 21, 2000, the TWP investment bankers, as well as the TWP research
25 analysts who worked on the Gemplus U.S. IPO, sent a memorandum to TWP's Commitment
26 Committee in support of TWP's participation in the Gemplus U.S. IPO. According to this

1 memorandum, the TWP analysts prepared financial models after spending “extensive time with
2 [the lead underwriter] and the company.”

3 34. On January 3, 2001, the TWP analysts visited the venture capital firm’s San
4 Francisco office and discussed Gemplus, among several items, with two senior partners of the
5 venture capital firm. On January 4, 2001, the Gemplus Junior Analyst e-mailed one of the partners
6 of the venture capital firm, writing that “in keeping w/our commitment to support the [Gemplus]
7 stock, we are initiating research coverage tomorrow, Fri., the first day possible after the 25-day
8 quiet period expires in the States.” The Gemplus Junior Analyst also advised the venture capital
9 firm partner that “we have not yet had an opportunity to speak w/ [the new Gemplus CFO]
10 regarding any substantive/necessary changes to our model and full report.” The Gemplus Junior
11 Analyst continued, “as such, we will publish an abbreviated note in the interim, and would like to
12 set up a conference call as soon as possible to discuss any necessary changes so we can get the full
13 report to our institutional client base.” The Gemplus Junior Analyst attached a copy of TWP’s
14 European version of the Gemplus report to the e-mail and advised that “we will use as the starting
15 point for any new revision.”

16 35. On January 5, 2001, the Gemplus Senior Analyst e-mailed Gemplus’ senior
17 management, as well as partners at the venture capital firm, stating: “Gentlemen: As promised, I
18 am pleased to send you this research note that was transmitted to First Call this morning. This is
19 our launch of research coverage on Gemplus, 25 days to the hour, following the successful
20 company public offering in the U.S. and Europe.” The Gemplus Senior Analyst continued in the e-
21 mail, “we await your final comments on our lengthy written research report that we have already
22 sent you. Following our joint discussions – we will follow through with the publication of the
23 report. Again, it has been a pleasure working with both the Gemplus and [venture capital]
24 management teams. . . We look forward to working together in 2001 and beyond.” In addition to
25 soliciting comments of his research report from Gemplus management, the Gemplus Senior analyst
26

1 solicited comments on the report from the controlling shareholder of Gemplus. The Gemplus
2 Senior Analyst published the full research report on January 16, 2001.

3 36. The Gemplus Senior Analyst provided research coverage of the company until
4 August 1, 2001. TWP's Gemplus research reports, notes, and other industry publications were
5 distributed through Public Services.

6 **Research Department Made Coverage Decisions Based Upon Investment Banking**
7 **Concerns**

8 37. TWP's equity research department also made coverage decisions based, in part, on
9 investment banking concerns. TWP prepared research "Drop Lists" that detailed the institutional
10 commissions generated by the covered companies, the trading profit and loss, the names of the
11 institutional investors and venture capitalist firms who held stock in the covered companies, and
12 the banker feedback concerning whether to drop research coverage. Explaining a January 2001
13 version of the research Drop List, TWP's Chief Operating Officer of Investment Banking ("COO
14 of Investment Banking"), e-mailed TWP's Head of Corporate Finance, and TWP's Director of
15 Sales:

16 I've made an attempt to get banking's feedback on potential banking business for each of
17 these clients. We should also assess the potential impact on affiliated venture capitalists for
18 those companies we decide to drop. . . I will be in touch to schedule a meeting for us to
19 review the list in more detail and provide specific recommendations to [TWP's Chief
20 Operating Officer] and [TWP's then acting Director of Research].

21 38. With regards to the banker feedback section of a February 2001 Drop List, reasons
22 to "keep" research coverage included: "recent IPO," "M&A engagement," "good banking client,"
23 "M&A prospects," "multiple fee opportunity," and "potential M&A" Reasons to "hold" coverage
24 included: "waiting for M&A fee (Jan 01)," and a named investor is "considering investing."

25 **Stamps.com**

26 39. An example of TWP's decision to drop or effectively to cease research coverage is
the case of Stamps.com, Inc., a company that provided Internet postage services. Stamps.com

1 conducted its IPO on June 24, 1999, and its stock has since been quoted on the NASDAQ National
2 Market under the ticker symbol STMP. TWP participated as a member of the underwriting
3 syndicate for the IPO.

4 40. On July 21, 1999, a TWP partner and senior research analyst (“Stamps.com Senior
5 Analyst”) initiated research coverage on Stamps.com with a “Buy” rating. TWP continued its
6 research coverage of Stamps.com in reports it issued during 1999 and 2000. TWP also issued other
7 periodic industry reports or notes mentioning Stamps.com during the relevant period. TWP’s
8 Stamps.com research reports, notes, and other industry publications discussing Stamps.com were
9 distributed through Public Services.

10 41. The Stamps.com Senior Analyst maintained a “Buy” rating on Stamps.com until
11 October 29, 1999, the last date on which he issued a research note on the company. On December
12 6, 1999, Stamps.com conducted a secondary offering. TWP was again a member of the
13 underwriting syndicate for that offering.

14 42. In late 1999, TWP transitioned research coverage on the company from the
15 Stamps.com Senior Analyst to a TWP vice president and junior research analyst (“Stamps.com
16 Junior Analyst”). On January 29, 2000, the Stamps.com Junior Analyst initiated research coverage
17 with a “Buy” rating. On February 7, 2000, Stamps.com acquired another company and TWP
18 provided Stamps.com with a fairness opinion regarding the acquisition.

19 43. The Stamps.com Junior Analyst maintained his “Buy” rating on Stamps.com until
20 September 19, 2000 when he ceased publishing any additional research on the company. During
21 the time period that he actively covered the company, the Stamps.com Junior Analyst maintained a
22 “Buy” rating on Stamps.com despite the steady decline of the company’s stock price from \$35.12
23 on January 27, 2000 to \$6.00 on September 19, 2000.

24 44. On November 27, 2000, the Stamps.com Junior Analyst e-mailed a TWP partner
25 and Director of East Coast Research (in December 2000, this TWP partner became the acting
26 Director of Research) explaining reasons why TWP should “kill,” or discontinue, research

1 coverage on Stamps.com. The Stamps.com Junior Analyst explained that: (1) Stamps.com was not
2 “core” to the companies he was then covering; (2) there was “no more [investment] banking
3 [business] to be done”; and (3) that there was “limited commission opportunity” as a market maker
4 in Stamps.com’s stock.

5 45. With regard to the lack of additional investment banking business, the Stamps.com
6 Junior Analyst explained in more detail that: (1) TWP had been paid for the Stamps.com IPO, a
7 follow-on offering, and a fairness opinion for a merger; (2) Stamps.com had retained another
8 investment banking firm to review the company’s strategic options; and (3) contrary to his earlier
9 belief, a Stamps.com wholly-owned subsidiary was unlikely to do a 2001 IPO.

10 46. The Stamps.com Junior Analyst also explained the “sensitivities” associated with
11 dropping coverage. Those “sensitivities” included the fact that certain venture capitalists, who
12 were also TWP clients, had investments in Stamps.com. He advised his supervisor that one
13 venture capital firm “is a big [institutional] client and has owned all the way down.” Despite these
14 “sensitivities,” the Stamps.com Junior Analyst pointed out to his supervisor that the venture
15 capitalists “hired [another investment banking firm] not us for potential M&A trade” and that there
16 would be “limited downside on [Stamps.com] stock from cutting research sponsorship.”

17 47. On January 8, 2001, the acting Director of Research, responded to the Stamps.com
18 Junior Analyst’s November 27, 2000 e-mail with a number of edits and instructions to send the e-
19 mail to other senior managers of TWP’s Sales and Trading Department, Private Client Department,
20 and Corporate Finance for their “reactions” to the Stamps.com Junior Analyst’s recommendation.
21 Senior TWP management did not object to dropping research coverage on Stamps.com and, in
22 response to the Stamps.com Junior Analyst’s e-mail, the head of TWP Corporate Finance advised
23 the Stamps.com Junior Analyst to “drop” coverage on Stamps.com. However, on January 12,
24 2001, TWP’s COO of Investment Banking e-mailed the Stamps.com Junior Analyst advising him
25 that the head of the firm wanted him to “hold on to this stock for now” but that he “shouldn’t feel
26 that [he had] to do any work on it, just don’t drop it.” The COO of Investment Banking further

1 explained that TWP had a number of venture capitalist backed stocks in the Stamps.com sector and
2 that the head of the firm “wants to manage this relationship carefully.”

3 48. The Stamps.com Junior Analyst did not publish any research on Stamps.com after
4 its last note on September 19, 2000. However, TWP never issued a note that it was dropping
5 coverage on Stamps.com.

6 **Verisign**

7 49. Verisign, Inc. is a provider of digital trust services that enable businesses and
8 consumers to engage in commerce and communications. Verisign’s IPO was on January 29, 1998,
9 and its stock has since been quoted on the NASDAQ National Market under the ticker symbol
10 VRSN. TWP did not participate in the underwriting of this IPO.

11 50. On June 25, 1999, TWP, through a research report issued by a TWP partner and
12 senior research analyst (“Verisign Senior Analyst”), initiated research coverage on Verisign with a
13 “Buy” rating. TWP continued research coverage of Verisign in reports issued during the relevant
14 period. TWP also featured Verisign in other periodic industry reports or notes during the relevant
15 period. TWP’s Verisign research reports, notes, and other industry publications discussing
16 Verisign were distributed through Public Services.

17 51. In November 1999, TWP transitioned coverage of Verisign from the Verisign
18 Senior Analyst to a TWP vice president and junior research analyst (“Verisign Junior Analyst”).
19 The Verisign Junior Analyst maintained the “Buy” rating on Verisign until December 21, 1999,
20 when he upgraded his rating to a “Strong Buy.” He maintained that rating until January 25, 2001,
21 when he downgraded Verisign’s rating to a “Buy.” After the Verisign Junior Analyst advised
22 Verisign’s CEO that he was downgrading the stock, the Verisign CEO called a TWP partner and
23 demanded that TWP fire the Verisign Junior Analyst. On February 2, 2001, TWP terminated the
24 Verisign Junior Analyst, along with a number of other research analysts, and transitioned Verisign
25 coverage.

26 ...

1 52. On April 16, 2001, the Verisign Senior Analyst re-initiated research coverage on
2 Verisign with a “Buy” rating. The Verisign Senior Analyst also e-mailed a number of TWP
3 investment bankers a copy of his research report and advised them that he had “spoken at length
4 with [Verisign’s CFO and CEO] re: possible TWP banking at Verisign, they will make available
5 last week of May for us to pull together a presentation they have asked me to co-ordinate. Please
6 advise who wants to be involved.” On April 27, 2001, the Verisign Senior Analyst upgraded
7 Verisign’s rating to a “Strong Buy.”

8 53. The Verisign Senior Analyst and TWP investment bankers prepared a pitch
9 presentation for Verisign management. On May 29, 2001, the Verisign Senior Analyst and TWP
10 investment bankers drove to Verisign’s offices in Silicon Valley and made an investment banking
11 pitch to the company’s management. The pitch book prepared for the May 29, 2001 presentation
12 touted TWP’s research role as a “strong supporter of Verisign’s story,” and the Verisign Senior
13 Analyst’s recent upgrade of the stock to a “Strong Buy.”

14 54. The Verisign Senior Analyst continuously covered Verisign from April 16, 2001 to
15 September 10, 2001, despite his participation in TWP’s pitch to Verisign for investment banking
16 business. TWP transitioned research coverage of Verisign on October 26, 2001, from the Verisign
17 Senior Analyst to another analyst who then initiated coverage with a “Buy” rating.

18 **D. TWP ISSUED RESEARCH REPORTS ON THREE COMPANIES THAT WERE**
19 **NOT BASED ON PRINCIPLES OF FAIR DEALING AND GOOD FAITH AND DID**
20 **NOT PROVIDE A SOUND BASIS FOR EVALUATING FACTS, CONTAINED**
21 **EXAGGERATED OR UNWARRANTED CLAIMS ABOUT THESE ISSUERS,**
AND/OR CONTAINED OPINIONS FOR WHICH THERE WAS NO
REASONABLE BASIS

22 **InfoSpace**

23
24 55. InfoSpace, Inc., is a diversified technology and services company. TWP was an
25 underwriter for InfoSpace’s March 30, 1999 secondary offering. On April 1, 1999, a TWP partner
26 initiated coverage of InfoSpace with a “Buy” rating. TWP maintained its “Buy” rating on

1 InfoSpace through December 7, 1999. Shortly thereafter, TWP transitioned coverage of InfoSpace
2 from a TWP partner to a vice president and junior research analyst (“InfoSpace Research
3 Analyst”). InfoSpace’s stock trades on the NASDAQ National Market under the ticker symbol
4 INSP.

5 56. In January 2000, the InfoSpace Research Analyst initiated his coverage on
6 InfoSpace with a “Buy” rating, which he maintained until he lowered it to “Market Perform” in
7 July 2001. During that time, the price of InfoSpace’s stock declined from \$43 to about \$2. Despite
8 his “Buy” rating, as early as January 2001 and continuing over the next four months, the InfoSpace
9 Research Analyst had serious doubts about InfoSpace’s business prospects and was privately
10 telling others that the stock was not a buy and to “get out of” InfoSpace.

11 57. In January 2001, the TWP InfoSpace Research Analyst submitted a draft InfoSpace
12 research note to a TWP supervisory analyst for review prior to publication. In the draft report, the
13 InfoSpace Research Analyst recommended that investors await certain information from the
14 company “before considering purchasing shares of INSP.” The supervisory analyst edited the
15 report suggesting that the InfoSpace Research Analyst remove the language above, and advised
16 him that “if the stock is BUY rated, we cannot tell investors not to buy the stock.” Rather than
17 adjust the buy rating, the InfoSpace Research Analyst issued his report on January 11, 2001 with
18 the edits the supervisory analyst suggested.

19 58. The InfoSpace Research Analyst privately e-mailed others explaining that he did not
20 think the stock should be rated a “Buy.” For example, on January 22, 2001, the InfoSpace
21 Research Analyst explained to a TWP salesperson: “I can’t frickin believe that I still have
22 [InfoSpace] as a buy rating. I need a drink.” In an e-mail later that same day to a TWP research
23 associate who was working with him, the InfoSpace Research Analyst explained:

24 while I don’t want to piss off [InfoSpace’s CEO] I also don’t care that
25 much . . . I think INSP is dead \$ and that upside catalysts are limited. I
26 don’t talk on the stock and the buy rating only gives me access to mgmt
for info on wireless.

1 59. Within minutes of sending this e-mail to his assistant, the InfoSpace Research
2 Analyst e-mailed TWP's Head of the Product Management Group, TWP's Director of Sales and
3 TWP's acting Director of the Research Department about changes in InfoSpace's management
4 which indicated to the InfoSpace Research Analyst that the company's ability to execute a wireless
5 plan was "probably diminishing." The InfoSpace Research Analyst further explained that the:

6 heart of the new mgmt team is out and we are left with the same mgmt
7 team that was in place back in April. I did not have confidence in that
8 previous mgmt team's ability to take the company to the next level and I
9 remain skeptical on the company's near term outlook now. I may be
 calling the bottom and [InfoSpace's CEO] will be pissed, but this stock
 is not a buy.

10 60. Later that same day, the InfoSpace Research Analyst, responding to some of the
11 acting Director of Research's questions, stated:

12 I do not think INSP falls much, but I cannot comprehend recommending
13 people buy this . . . would like to swap out of INSP and into [Openwave
14 Systems ("Openwave"), an InfoSpace competitor]. . . I have been
15 verbally saying to get out of INSP . . . basically can sit here with a buy
 and never speak on stock or I can downgrade. I do not want to piss of
 [InfoSpace's CEO], but I should have downgraded stock long ago.

16 61. On January 23, 2001, the InfoSpace Research Analyst sent a draft copy of a new
17 research note with a "Buy" rating on InfoSpace to a supervisory analyst for review. The draft
18 research note stated, in part: "we recommend that investors remain cautious on the stock" The
19 supervisory analyst e-mailed the InfoSpace Research Analyst, stating: "we cannot tell investors to
20 'remain cautious' on a BUY-rated stock." The InfoSpace Research Analyst edited the note and
21 deleted the "remain cautious" language as the supervisory analyst suggested and TWP published
22 the note that day.
23

24 62. Later in the morning on January 23, the InfoSpace Research Analyst sent e-mails to
25 a number of people explaining that he should have downgraded the stock. He first e-mailed his
26 assistant, explaining: "I saw that some people downgraded INSP this morning . . . I want the stock

1 to increase before we downgrade.” The InfoSpace Research Analyst next explained to TWP’s
2 head of sales: “I never did the downgrade. I missed it weeks ago. Wanted to speak with mgmt
3 first . . . also I’m hoping shares rebound over the next few weeks. . . then I’ll downgrade.” The
4 InfoSpace Research Analyst also e-mailed a TWP investment banker: “Yea. I should have
5 downgraded INSP last night. I want to have a call with [InfoSpace’s CEO] and tell him I’m going
6 to do it before I do it.”

7 63. From January 29 through February 13, 2001, the InfoSpace Research Analyst
8 continued privately to tell the sales and trading departments, and investors with whom he spoke,
9 that he recommended swapping out of InfoSpace and into Openwave. For example, on January 29,
10 the InfoSpace Research Analyst, in an e-mail intended for TWP internal use only, wrote to the
11 sales and trading departments that InfoSpace’s “2001 guidance will be negative. Swap into
12 Openwave.” That same morning, the InfoSpace Research Analyst also e-mailed TWP’s head of
13 product management, asking him to mention during the morning call with the sales and trading
14 departments that investors should swap out of InfoSpace and into Openwave.
15

16 64. While privately telling TWP sales and trading personnel and investors with whom
17 he spoke to swap out of InfoSpace, the InfoSpace Research Analyst nonetheless published yet
18 another company research note on January 30, 2001 with a “Buy” rating. Later that morning, the
19 TWP InfoSpace Research Analyst responded as follows to an e-mail from an individual at another
20 broker-dealer that noted another broker-dealer was cutting its earnings per share estimates on
21 InfoSpace: “We did the same. Although I still think that ’01 numbers are complete bull-shit. . . .”
22

23 65. On February 5, 7, and 11, 2001, the TWP InfoSpace Research Analyst again sent e-
24 mails to TWP’s sales and trading departments, stating in part: (1) “Swap from INSP to [Openwave
25]”; (2) “We believe accounts should wait on the sidelines until the company gives greater clarity on
26 its revised strategic plan”; and (3) “we are still adopting a wait and see attitude until we gain

1 greater confidence that the company will successfully manage the transition from its consumer
2 services business.” Despite his private comments to the contrary, on February 13, 2001, the
3 InfoSpace Research Analyst issued a research note in which he reiterated his “Buy” rating.

4 66. From February 13, 2001 to April 25, 2001, the InfoSpace Research Analyst did not
5 issue any new research reports or notes on InfoSpace, and the stock price declined more than 20%,
6 from \$5.00 to \$3.91. On April 25, the InfoSpace Research Analyst e-mailed the Deputy Director
7 of Research (on April 16, 2001, a new Director of Research began working at TWP and the acting
8 Director of Research became the Deputy Director of Research), explaining:

9 At some point we need to discuss this stock. They report today
10 post-close. I have never bothered to downgrade the stock, but made
11 comments to swap into [an InfoSpace competitor]. I think that any
12 [revenue opportunity] for TWP (i.e. banking) has fallen apart so actions
can be taken.

13 67. The Deputy Director of Research responded to the InfoSpace Research Analyst and
14 asked in part, “What are our commissions in INSP? What is it’s [sic]current market cap?” The
15 Deputy Director of Research also told the InfoSpace Research Analyst that he would run the
16 potential drop in coverage by other TWP department directors to “build a consensus course of
17 action.” The InfoSpace Research Analyst responded to the Deputy Director of Research explaining
18 that TWP’s commissions were:

19 \$145k to-date (\$140 in jan/feb) when we told people to swap
20 into [the InfoSpace competitor]. We have very strong relationships [a
21 TWP partner and senior research analyst and InfoSpace’s CEO]. . . but I
22 do not get the sense that the bankers care anymore. Maintaining
coverage in [short term] is not a big problem since I’ve got the quarterly
report ‘automated’ . . . thanks.

23 68. The Deputy Director of Research e-mailed a number of TWP department directors
24 and other research analysts to ascertain if they had any problem with dropping research coverage or
25 whether other analysts wanted to pick up coverage of InfoSpace. The other TWP department
26 directors did not object to dropping coverage and none of the other TWP research analysts wanted

1 to pick up coverage of InfoSpace. On April 26, 2001, the InfoSpace Research Analyst issued
2 another research note on InfoSpace and reiterated his “Buy” rating on the company.

3 69. On May 2, 2001, the Deputy Director of Research e-mailed the InfoSpace Research
4 Analyst as follows:

5 Engineer whatever your desired outcome is on this one. If you want to
6 drop [InfoSpace], I will support you. No interest in it from the media
7 guys or consumer guys [i.e., TWP research analysts], and [the head of
8 trading] doesn’t care. If you like the insight and get some trading
commissions and it helps your franchise, then keep it. If it is a
distraction that doesn’t help your impact with accounts then . . . Thanks.

9 70. On May 30, 2001, the InfoSpace Research Analyst, apparently responding to an e-mail
10 from another one of his assistants, stated: “I agree re: INSP. I hate having it as a buy, but nothing I
11 can do now” The InfoSpace Research Analyst maintained his “Buy” rating on InfoSpace until
12 July 25, 2001 when he finally downgraded the stock to a “Market Perform” rating. He published
13 his last research note on InfoSpace on November 26, 2001, again with a “Market Perform” rating.
14 In this report, the InfoSpace Research Analyst also explained that he was discontinuing his
15 research coverage of InfoSpace.

16 **Level 3 Communications**

17 71. Level 3 Communications, Inc. is a telecommunications and information services
18 company that operates an advanced international facilities-based communications network based
19 on Internet Protocol technology. Level 3’s stock trades on the NASDAQ National Market under
20 the ticker symbol LVLT.

21 72. TWP commenced its research coverage of Level 3 with a “Buy” rating and a year-
22 end \$100 price target on September 15, 2000, when the stock opened at \$78.25 per share. TWP
23 maintained its “Buy” rating on Level 3 even as the stock price declined from \$78.25 per share to
24 \$5.97 per share on June 18, 2001. Not until June 19, 2001 did TWP downgrade its rating of Level
25 3 to “Market Perform.” TWP continued to cover Level 3 until October 26, 2001, when it
26 discontinued coverage. TWP re-initiated coverage on Level 3 on January 20, 2004.

73. On May 21, 2001, when TWP rated Level 3 a “Buy” and its shares were trading at \$13.06, another firm covering Level 3 lowered its rating from “Strong Buy” to “Market Underperform.” TWP’s Deputy Director of Research, who was aware of the downgrade, e-mailed the TWP vice president and research analyst covering the stock (“Level 3 Analyst”) about the “Buy” rating stating: “doesn’t sound like a buy.” In a series of e-mails that day, the Level 3 Analyst responded to the inquiries concerning the “Buy” rating and explained that he wanted to delay the downgrade to ensure that Level 3 executives attended a conference that TWP sponsored:

- It isn’t [a buy]. I’m waiting until after the conference [TWP’s annual “Growth Forum” conference], and before the next quarter to downgrade. If we do it now it won’t look as aggressive as if we do it in front of their quarter. So we’ll probably downgrade around the beginning of July. The stock isn’t going to make a significant move until then. We expect it will probably trade in the mid-teens. We’re expecting the stock to move down into single digits after another “average” quarter, and possible downward revision in estimates.
- There is also the issue of wanting to ensure that they come to our conference and speak on our panel. If I downgrade right now they will assuredly pull from our conference and we can’t afford that.
- We have always maintained the stock is a speculative buy. We’ve been very clear that there were issues on this name, but that as long as you knew what you were getting into it was a good stock to trade. Just recently it has become very clear that the company [is] settling into a single market company, and the issues haven’t gone away. In my commentary to the clients I am positioning it as a name that they can still trade, but one that will probably see a downward trend before a significant upward movement.

74. On May 31, 2001, in response to an e-mail from TWP’s Director of Communications Services Research advising that he had just had a conversation with a firm that was “very negative on level3,” the Level 3 Analyst stated:

we have been negative on the name as well. I’ve basically been telling our clients that it is a great short. They’re on the verge of laying off almost 1,000 people (not yet announced yet). They are still trading at a premium valuation to Williams and 360. I haven’t lowered the rating

1 mainly because I need them to show up at our conference. If I lower to
2 a [Market Perform] I guarantee they won't attend. We'll lower the
rating after the conference, in front of the quarter.

3 75. Despite the Level 3 Analyst's view of the company expressed in the May 21 and 31,
4 2001, e-mails, he maintained his "Buy" rating in the stock for almost another month, until he
5 finally downgraded the stock to "Market Perform" on June 19, 2001.

6 **Sprint FON Group**

7 76. Sprint FON Group is comprised of Sprint's wireline telecommunications operations,
8 including long distance, local phone, product distribution and directory publishing. Sprint FON
9 Group's stock trades on the NYSE under the ticker symbol FON.

10 77. On June 13, 2001, before initiation of coverage and the announcement of a rating,
11 the TWP vice president and junior research analyst assigned to cover the stock ("FON Research
12 Analyst") attended a meeting at FON's headquarters with members of the FON management.
13 Following this meeting, the FON Research Analyst e-mailed the Director of Communications
14 Services Research, stating:

15 this is a market perform company. No 2 ways about it. However, I'm
16 aware of the conflict [sic] that is arising due to a better than average
17 probability of our getting on an FON convert deal. Need to speak to
18 you about the rating. We could go out with a Buy based on our belief
that they are going to accomplish a couple of things, and then explain
19 that failure to do so will cause us to downgrade. We're protected in that
case. Let's talk tomorrow.

20 78. On June 19, 2001, TWP initiated coverage of FON with a "Buy" rating. In that
21 report, TWP did not disclose that one reason that it had made a "Buy" recommendation was the
22 fact that TWP hoped to obtain investment banking business from Sprint.

23 **E. TWP RECEIVED PAYMENT IN CONSIDERATION OF ITS PROVIDING**
24 **RESEARCH COVERAGE OF HOTJOBS.COM**

25 79. Between 1999 and 2001, TWP received payment from the proceeds of at least one
26 underwriting to compensate the firm for services that included publishing research on the issuer.

1 Despite having an obligation to do so, TWP failed to disclose in research reports or elsewhere that
2 it received the payment, in part, as compensation for issuing the reports.

3 80. In August 1999, Hotjobs.com, Ltd., conducted an IPO for which another broker-
4 dealer acted as lead underwriter. TWP was not included in the syndicate for the Hotjobs IPO.
5 Although not a member of the original syndicate, TWP did act as an underwriter for a Hotjobs.com
6 secondary offering that took place on November 10, 1999.

7 81. In connection with the Hotjobs IPO, the lead underwriter for the Hotjobs IPO made
8 a payment of \$40,000 to TWP by a check dated November 4, 1999. The lead underwriter's records
9 concerning the IPO indicate that the lead underwriter made the payment in settlement of a
10 "guaranteed" selling concession to be paid in either stock or cash. The lead underwriter's records
11 indicate that it guaranteed the selling concession to TWP in consideration of the fact that "[a TWP
12 research partner] will pick up research." TWP did not disclose or cause to be disclosed the fact of
13 this payment.

14 82. On September 9, 1999, TWP, through a research report issued by the TWP research
15 partner, initiated research coverage on Hotjobs.com with a "Buy" rating. TWP continued its
16 research coverage concerning Hotjobs.com in reports it issued during 1999 and 2000. TWP
17 upgraded Hotjobs.com to a "Strong Buy" on February 16, 2000.

18 83 TWP also provided research coverage to Hotjobs.com in other publications during
19 1999 and 2000. TWP's Hotjobs.com research reports, notes, and other publications were
20 distributed through Public Services.

21 84. TWP did not disclose that it had received consideration, or the amount thereof, for
22 its research or other publications concerning Hotjobs.com in any of its publications concerning
23 Hotjobs.com.

24 ...

25 ...

26 ...

1 **F. TWP FAILED TO ENSURE PUBLIC DISCLOSURE OF PAYMENTS IT MADE**
2 **FROM THE PROCEEDS OF UNDERWRITINGS TO BROKERAGE FIRMS TO**
3 **ISSUE RESEARCH COVERAGE REGARDING ITS INVESTMENT BANKING**
4 **CLIENTS**

5 85. During the relevant period, TWP paid portions of certain underwriting proceeds to
6 other brokerage firms to initiate or continue research coverage on issuers for whom TWP served as
7 lead or co-manager. TWP knew that these payments were, in part, for research. TWP did not take
8 steps to ensure that the brokerage firms it paid to initiate or continue coverage of its investment
9 banking clients disclosed that they had been paid to issue such research. Further, TWP did not
10 disclose or cause to be disclosed in offering documents or elsewhere the fact of or reason for such
11 payments.

12 **Arena Pharmaceuticals**

13 86. In June 2001, TWP acted as lead underwriter for a secondary offering of securities
14 by Arena Pharmaceuticals, Inc. In connection with that underwriting, TWP made payments
15 totaling \$325,000 to three broker-dealers in consideration of their providing research coverage of
16 Arena Pharmaceuticals stock. The check stub for each of the payments described the payment as
17 "Research Fees for Arena Pharmac." TWP did not ensure these payments were disclosed to the
18 public by the broker-dealers in their published reports on Arena Pharmaceuticals.

19 **Proxicom**

20 87. In October 1999, TWP acted as lead underwriter for a secondary offering of
21 securities by Proxicom, Inc. In connection with that underwriting, TWP made payments totaling
22 \$50,000 to two firms in consideration of those firms providing research coverage concerning
23 Proxicom securities. The check stub for each of those payments indicated that the check was in
24 consideration of "Research Proxicom." TWP did not ensure these payments were disclosed to the
25 public by the broker-dealers in their published reports on Proxicom. TWP included another
26 \$25,000 for payment to a third firm in its expense budget for the Proxicom underwriting syndicate.

1 However, TWP did not pay that firm. TWP's accounting records indicate the payment was "held"
2 until that firm "start[ed] research coverage."

3 **G. TWP FAILED TO SUPERVISE ADEQUATELY ITS RESEARCH ANALYSTS AND**
4 **INVESTMENT BANKING PROFESSIONALS**

5 88. During the relevant period, TWP's management failed to monitor adequately the
6 activities of the firm's research and investment banking professionals to ensure compliance with
7 NASD and NYSE rules and the federal securities laws. Among other things, this failure to
8 supervise gave rise to and perpetuated the above-described violative conduct.

9 **III. CONCLUSIONS OF LAW**

10 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
11 Arizona Constitution and the Securities Act.

12 2. In connection with the conduct described hereinabove, TWP engaged in dishonest
13 or unethical practices in the securities industry under A.R.S. § 44-1961(A)(13).

14 3. TWP's conduct is ground for administrative penalties pursuant to A.R.S. § 44-
15 1961(B)(1).

16 4. TWP's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
17 1961(B)(2).

18 5. TWP's conduct is grounds for an order requiring TWP to take affirmative action to
19 correct the conditions and practices giving rise to this action pursuant to A.R.S. § 44-1961(B)(3).

20 6. Nothing in this Order shall be construed as an admission or finding of fraud.

21 **IV. ORDER**

22 On the basis of the Findings of Fact, Conclusions of Law, and TWP's consent to the entry
23 of this Order, attached and incorporated by reference, for the sole purpose of settling this matter,
24 prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of
25 Law, the Commission finds the following relief appropriate, in the public interest and necessary for
26 the protection of investors.

...

1 IT IS HEREBY ORDERED:

2 1. This Order concludes the Investigations by the Commission and any other action
3 that the Commission could commence under applicable Arizona law on behalf of ~~the~~ Arizona as it
4 relates to TWP, or its affiliates, or the current or former directors, officers or employees of TWP or
5 its affiliates arising from or relating to the subject of the Investigations, provided however, that
6 excluded from and not covered by this paragraph 1 are any claims by the Commission arising from
7 or relating to enforcement of the "Order" provisions contained herein.

8 2. Pursuant to A.R.S. § 44-1961(B)(2) and (3) TWP will CEASE AND DESIST from
9 engaging in dishonest or unethical conduct under A.R.S. § 44-1961(A)(13) in connection with the
10 research practices referenced in this Order and will comply with the undertakings of Addendum A,
11 incorporated herein by reference.

12 3. If payment is not made by TWP or if TWP defaults in any of its obligations set forth
13 in this Order, the Commission may vacate this Order, at its sole discretion, upon 10 days notice to
14 TWP and without opportunity for administrative hearing and TWP agrees that any statute of
15 limitations applicable to the subject of the Investigation and any claims arising from or relating
16 thereto are tolled from and after the date of this Order.

17 4. This Order is not intended by the Commission to subject any Covered Person to
18 any disqualifications under the laws of any state, the District of Columbia or Puerto Rico
19 (collectively, "State"), including, without limitation, any disqualifications from relying upon the
20 State registration exemptions or State safe harbor provisions. "Covered Person" means TWP, or
21 any of its officers, directors, affiliates, current or former employees, or other persons that would
22 otherwise be disqualified as a result of the Orders (as defined below).

23 5. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of
24 Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings
25 against TWP (collectively, the "Orders") shall not disqualify any Covered Person from any
26 business that they otherwise are qualified, licensed or permitted to perform under applicable law of

1 Arizona and any disqualifications from relying upon this state's registration exemptions or safe
2 harbor provisions that arise from the Orders are hereby waived.

3 6. For any person or entity not a party to this Order, this Order does not limit or create
4 any private rights or remedies against TWP including, without limitation, the use of any e-mails or
5 other documents of TWP or of others regarding research practices or limit or create liability of
6 TWP or limit or create defenses of TWP to any claims.

7 7. Nothing herein shall preclude Arizona, its departments, agencies, boards,
8 commissions, authorities, political subdivisions and corporations, other than the Commission and
9 only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers,
10 agents or employees of State Entities from asserting any claims, causes of action, or applications
11 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive
12 relief against TWP in connection with certain research and/or banking practices at TWP.

13 8. TWP agrees not to take any action or to make or permit to be made any public
14 statement denying, directly or indirectly, any finding in this Order or creating the impression that
15 this Order is without factual basis. Nothing in this paragraph affects TWP's: (i) testimonial
16 obligations, or (ii) right to take factual or legal positions in defense of litigation or in defense of
17 other legal proceedings in which the Arizona Corporation Commission is not a party.

18 9. This Order shall be binding upon TWP and its successors and assigns. Further, with
19 respect to all conduct subject to Paragraph 2 above and all future obligations, responsibilities,
20 undertakings, commitments, limitations, restrictions, events, and conditions, the terms "TWP" and
21 "TWP's" as used herein shall include TWP's successors and assigns (which, for these purposes,
22 shall include a successor or assign to TWP's investment banking and research operations, and in
23 the case of an affiliate of TWP, a successor or assign to TWP's investment banking or research
24 operations).

25 ...

26 ...

V. MONETARY SANCTIONS

IT IS FURTHER ORDERED, that:

1. Pursuant to A.R.S. § 44-1961(B)(1), TWP shall pay an administrative penalty in the amount of \$79,064.00.

2. TWP agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that TWP shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors.

3. TWP further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that TWP shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. TWP understands and acknowledges that these provisions are not intended to imply that the Commission would agree that any other amounts TWP shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

VI. GENERAL PROVISIONS

1. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Arizona without regard to any choice of law principles. The parties represent, warrant and agree that they have received independent legal advice from their attorneys with respect to the advisability of executing this Order.

...

...

2. TWP enters into this Consent Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce TWP to enter into this Consent Order.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

/s/ Jeffrey A. Hatch-Miller
CHAIRMAN

William Mundell
COMMISSIONER

Marc Spitzer
COMMISSIONER

Lowell Gleason
COMMISSIONER

Kristin Mayes
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 2nd day of May, 2005.

/s/ Brian C. McNeil
BRIAN C. McNEIL
Executive Secretary

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail lhogan@cc.state.az.us.

(PAH)

**CONSENT TO ENTRY OF
ADMINISTRATIVE ORDER BY TWP**

1. TWP hereby acknowledges that it has been served with a copy of this Administrative Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.
2. TWP admits the jurisdiction of the Commission, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Commission as settlement of the issues contained in this Order.
3. TWP states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.
4. TWP understands that the Commission may make such public announcement concerning this agreement and the subject matter thereof as the Commission may deem appropriate.
David Baylor represents that he is Chief Administrative Officer of TWP and that, as such, has been authorized by TWP to enter into this Order for and on behalf of TWP.

Dated this 2 day of March, 2005

Thomas Weisel Partners, LLC

By: /s/ David Baylor
David Baylor

Title: Chief Administrative Officer
Chief Administrative Officer

SUBSCRIBED AND SWORN TO before me this 2nd day of March, 2005.

/s/ Frederick S. Drum
Notary Public

My Commission expires: 9/30/07